



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 18-01998
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Moran, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the Guideline B, foreign influence concerns. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On July 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective June 8, 2017 (AG).

Applicant answered the SOR on August 17, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 2, 2018. The evidence

included in the FORM is identified as Items 3-5 (Items 1 and 2 include pleadings and transmittal information). The FORM was mailed to Applicant, who received it on October 16, 2018. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not file objections or submit any additional evidence. Items 3-5 are admitted into evidence without objection. The case was assigned to me on February 14, 2019.

Procedural Ruling

I took administrative notice of facts concerning Iraq. Department Counsel provided supporting documents that verify, detail, and provide context for the requested facts. The specific facts noticed are included in the Findings of Fact.¹

Administrative or official notice is the appropriate type of notice used for administrative proceedings.² Usually administrative notice in ISCR proceedings is accorded to facts that are either well known or from U.S. Government reports.³

Findings of Fact

In Applicant's answer to the SOR, he admitted all the SOR allegations. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

The SOR alleged Applicant's father, mother, two brothers, two sisters, and his brother-in-law are citizens and residents of Iraq. It further alleged that one brother (B1) works for the Ministry of Defense, Military Intelligence Branch. (SOR ¶¶ 1.a-1.c).

Applicant is 41 years old. He was born in Iraq in 1977. He remained there until January 2007 when he resided in Damascus, Syria, with his father. He was unemployed when he was living in Syria. He remained there until February 2008, when he returned to Iraq. He immigrated to the United States in 2010 through an international refugee program. He is seeking a clearance for a translator position with a federal contractor. From 2010 to the present, he has worked for a private employer. He is single, never married, with no children. He owns a home in the United States, but no further details are included in the record.⁴

¹ The Government's request and the supporting background documents were marked as AD EX I.

² See ISCR Case No. 05-11292 at 4 n.1 (App. Bd. Apr. 12, 2007); ISCR Case No. 02-24875 at 2 (App. Bd. Oct. 12, 2006) (citing ISCR Case No. 02-18668 at 3 (App. Bd. Feb. 10, 2004) and *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986).

³ See Stein, *Administrative Law*, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice).

⁴ Items 3-5.

In 2014 and 2016, Applicant visited Iraq for approximately 30 days per visit. He traveled to Iraq to see his family. While he was in Iraq in 2016, he renewed his Iraqi passport. He possesses current Iraqi and U.S. passports. From July to November 2004, Applicant was employed as a translator/linguist for a U.S. contractor in Iraq. He quit the position because he felt it was too dangerous. In 2004, His brother-in-law was killed working for the same contractor.⁵

Foreign Influence

Applicant has the following relatives who are residents and citizens of Iraq:

1. His mother. His mother is 68 years old. She is not affiliated with the government or the military. Applicant has weekly telephone contact with her. In April 2016, Applicant sponsored her for entry into the United States seeking U.S. permanent residency status. So far, her visa has not been approved and she remains in Iraq.⁶

2. His father. His father is 71 years old. He was a counselor at the Ministry of Justice until he retired in 2004. Applicant has daily contact with his father. In April 2016, Applicant sponsored his father for entry into the United States seeking U.S. permanent residency status. He was approved and moved to the U.S. to live with Applicant. When Applicant's mother's status remained unresolved, his father moved back to Iraq where he currently resides. The record is unclear when this occurred. His father owns property in Iraq worth approximately \$250,000. Applicant will inherit a portion of this property upon his father's death.⁷

3. Applicant's two brothers (B1 and B2). B1 is 38 years old. He is employed by the Iraqi Ministry of Defense-Military Intelligence. He has worked there since approximately 2007. Applicant has monthly contact with B1. B2 is 33 years old. He currently resides in the United States with Applicant. He is a permanent resident alien (green card holder). He is employed by a private-sector company. Applicant has daily contact with him.⁸

4. Applicant's sister (S1). His sister is 41 years old. She is a teacher in Iraq. She is married. Applicant has monthly telephone contact with S1.⁹

5. Applicant's sister (S2) and brother-in-law. S2 is 42 years old. She is a teacher in Iraq. Applicant has monthly telephone contact with S2. Applicant's brother-in-law is

⁵ Item 5.

⁶ Items 3-5.

⁷ Items 3-5.

⁸ Items 3-4.

⁹ Items 3-4.

married to S2. His brother-in-law worked for the Ministry of Higher Education and Scientific Research until his retirement (date unknown).¹⁰

Iraq

The U.S. State Department warns U.S. citizens against travel to Iraq as conditions within the country remain dangerous. The U.S. Embassy warns that U.S. citizens are at high risk for kidnapping and violence and to avoid all but essential travel to Iraq. The U.S. government considers the potential threat to U.S. government personnel in Iraq to be serious enough to require them to live and work under strict security guidelines. The Islamic State of Iraq and Levant (ISIL) remained the greatest terrorist threat globally, maintaining a formidable force in Iraq and Syria.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

¹⁰ Items 3-4.

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern relating to the guideline for foreign influence is set out in AG ¶ 7:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7 indicates conditions that could raise a security concern and may be disqualifying in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an Applicant's family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member or friend is associated with or dependent upon the government, the country is known to conduct intelligence collection operations against the United States, or the foreign country is associated with a risk of terrorism. The relationship between Iraq and the United States places a significant, but not insurmountable burden of persuasion on Applicant to demonstrate that his relationships with his relatives living in Iraq does not pose a security risk. Applicant should not be placed in a position where he might be forced to choose between loyalty to the United States and a desire to assist his relatives living in Iraq who might be coerced by governmental entities or pressured to assist Iraq.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States."¹¹ Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

While there is no evidence that intelligence operatives from Iraq seek or have sought classified or economic information from or through Applicant or his relatives living in Iraq, it is not possible to rule out such a possibility in the future. AG ¶¶ 7(a) and 7(b) apply based upon Applicant's family members who are residents and citizens of Iraq. AG ¶ 7(c) also applies because B2 currently resides with Applicant.

AG ¶ 8 lists conditions that could mitigate foreign influence security concerns, including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

¹¹ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

AG ¶ 8(a) does not apply. Applicant's potential translator position could cause him to be placed in a position to choose between the interests of his relatives and those of the United States. Applicant testified that he has regular contact with his relatives in Iraq. AG ¶ 8(c) does not apply.

Applicant has not met his burden to establish his "deep and longstanding relationships and loyalties in the U.S." He worked as a translator for several months in 2004 for U.S. forces in Iraq before he quit because of the dangers associated with the job. Additionally, he visited Iraq in 2016 and renewed his Iraqi passport. He is apparently a homeowner in the United States, but additional details about his connections to this country are lacking. His father owns substantial property in Iraq, which Applicant is due to inherit. The evidence supports the conclusion that Applicant has substantial ties to Iraq. Because of those ties, it is unclear that he would resolve any conflict of interest in favor of the United States. AG ¶ 8(b) does not apply.

Whole-Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The circumstances tending to support granting Applicant's clearance are less significant than the factors weighing towards denying his clearance. I also considered his ties to Iraq are just as strong, if not more so, than his ties to the United States. At this point, the evidence does not support his long-standing ties and connections to the United States. Therefore, he provided insufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that the security concerns arising under Guideline B, foreign influence concerns were not mitigated.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge